

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2013-279**

**JACKI WILSON**

**APPELLANT**

**VS. FINAL ORDER  
SUSTAINING HEARING OFFICER'S  
FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER**

**CABINET FOR HEALTH AND FAMILY SERVICES  
J.P. HAMM, APPOINTING AUTHORITY**

**APPELLEE**

**AND**

**BETH WILSON**

**INTERVENOR**

**\*\* \*\* \***

The Board at its regular September 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated August 14, 2014, and being duly advised,

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

**SO ORDERED** this 17<sup>th</sup> day of September, 2014.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK, SECRETARY**

A copy hereof this day sent to:

Hon. Mona Womack  
Jacki Wilson  
Beth Wilson  
J. P. Hamm

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This matter came on for evidentiary hearing on May 12, 2014, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before Geoffrey B. Greenawalt, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Jacki Wilson, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present and was represented by the Hon. Mona Womack. The Intervenor, Beth Wilson, was present and was not represented by legal counsel.

The issue at the evidentiary hearing was whether the selection of Beth Wilson to the position of FS SRAA complied with the requirements set forth at KRS 18A.0751(4)(f) and 101 KAR 1:400. The burden of proof was upon the Appellant and was to be by a preponderance of the evidence.

**BACKGROUND**

1. The Appellant, Jacki Wilson, timely filed her appeal with the Personnel Board on December 2, 2013, appealing from the promotion of the Intervenor, Beth Wilson, to the position of FS SRAA a/k/a Family Support Service Region Administrator Associate, in the Two Rivers Service Region.

2. The first to testify at the evidentiary hearing was **Kevin Foley**, who is currently the Personnel Service Region Administrator Associate for the Two Rivers Service Region. Mr. Foley was not involved in the selection process for the position in question. However, he did play a major role in the re-design of the business model which began as a pilot program in Daviess County in early 2013.

3. Mr. Foley informed that the Family Support division determines public assistance eligibility. Prior to the re-design a caseworker had their own caseloads which were worked nearly exclusively by themselves. Upon re-design, a statewide call center was established and applications were worked by caseworkers located throughout the state on the telephone. In other words, rather than managing a dedicated caseload, a caseworker now managed a workload and had universal access to any open case in the state so long as working that particular application did not require a face-to-face meeting. This re-design was intended to help busy understaffed regions and to distribute the workload more evenly throughout the state using all available caseworkers.

4. Daviess County was one of four regions selected to implement the new plan, which began in February 2013 and by September or October of 2013 all nine regions had rolled-out.

5. According to Mr. Foley, at the time of the re-design, the Appellant was a Management Review Officer (MRO) and was required to travel across the state to evaluate the management of food stamp programs, etc., in each county. It was the Appellant's duty to take a sample of cases from the county she visited, draft a review finding and a corrective action plan, if necessary, in an effort to insure federal requirements associated with the food stamp program, etc., were being met. According to Mr. Foley, a MRO is not referred to as a leadership position, per se. However, it required a great deal of policy and procedure knowledge and commanded the respect of the local counties.

6. According to Mr. Foley, the Appellant had primary responsibility over the Adult Medicaid Program in Daviess County. According to Mr. Foley, Adult Medicaid is the most difficult program and in his opinion, the Appellant did a good job leading her unit, especially for Daviess County which presented a challenge due to frequent staff turnover.

7. On cross-examination, Mr. Foley explained that the goal of the re-design was to process cases quicker by utilizing the phone instead of requiring a site visitation to apply for benefits. He also explained that an MRO is a demotion from the supervisor position and that the Appellant chose to demote from supervisor to MRO in the fall of 2009.

8. The next to testify was **Joey Minor**, who is the SRA for the Two Rivers Region and has been since 2010. Mr. Minor was on the interview panel for the subject FS SRAA position. According to Mr. Minor, the Appellant had a good interview. Appellant's Exhibit 1 was introduced into the record, and is a copy of the selection packet produced as a result of the subject selection process. Mr. Minor explained that he chose the interview panel for this particular opening and that along with himself, Renee Buckingham and Jennifer Warren, who were each SRAs from different regions, served on the panel. Mr. Minor explained that once Kevin Foley was moved to Personnel Associate the subject opening was created. He requested a register from the Personnel Cabinet in Frankfort to be sure that all the applicants met the minimum requirements for the position. From the register, Mr. Minor selected four interviewees, including the Appellant and the Intervenor. Mr. Minor explained that all the interviews were held at the Butler County office on November 6, 2013. Included in Appellant's Exhibit 1 was Mr. Minor's written explanation to the Appointing Authority as to why Beth Wilson was chosen over the other three candidates. The Selection Worksheet, also included in Appellant's Exhibit 1, was signed by all three panel members and set forth the various items they considered in making their recommendation.

9. According to Mr. Minor, the interviewees were told to bring their last three years of performance evaluations, any award certificates and to complete an Internal Mobility Form. Following the interviews, the panel met on the same day for cursory review of the applicants. They met again in Frankfort the following week on November 13, 2013, at which time they reviewed and signed the Selection Worksheet included in Appellant's Exhibit 1 and recommended Mary Beth Wilson for the subject position.

10. According to Mr. Minor, the panel had basically chosen Mary Beth Wilson for the position after they first met, but wanted Assistant Director, Kelly Staples, who had more experience with filling open positions, to review their work before formally recommending her for the job. Mr. Minor also wanted Ms. Staples' input because he was concerned about recommending someone with less seniority and experience, but with better leadership qualities, and wanted to be sure the panel was not making a mistake.

11. Mr. Minor added that he was somewhat alarmed by the reasons the Appellant gave for wanting the job. He, along with the other panel members, ended up believing that getting the job was more important to her in order to right certain wrongs in her life than it was to promote the Cabinet's best interests moving forward. Mr. Minor considered the Appellant's motivation for wanting the job as being important because the "honeymoon" does not last very long and if the motivation for taking the position is wrong, you can end up with problems.

12. Appellant's Exhibit 3 was introduced through the witness and is the Appellant's Internal Mobility sheet. Mr. Minor admitted that he did not put the fact that the Appellant was a Field Training Specialist on the Selection Worksheet included within Appellant's Exhibit 1. He explained that that position equated to being more like a super worker rather than a leader and was not really relevant to the position. He also admitted that the Appellant's promotion to Case Management Specialist III was noted on her Internal Mobility sheet, but was not referred to on the Selection Worksheet.

13. On cross-examination, Mr. Minor reviewed Appellant's Exhibit 1 and noted that the five factors which are to be given appropriate consideration during the promotion process pursuant to 101 KAR 1:400 and KRS 18A.0751 are contained thereon and were each considered by the interview panel when they recommended the Intervenor for the subject position.

14. Appellee's Exhibit 1 was introduced through the witness and is a copy of the Intervenor's nomination for the April Vandeventer Leadership Award. This was provided to the interview panel by Ms. Beth Wilson at her interview.

15. Mr. Minor testified that in a nutshell, Ms. Beth Wilson was recommended because she demonstrated leadership capability with moving forward with the business re-design and roll-out. Her lack of seniority was considered and the interview panel was aware that she had less experience than the Appellant. Regardless, he thought Beth Wilson fully bought into the re-design while other people were still having problems with it.

16. Appellee's Exhibit 2 was introduced into the record and is a copy of Mr. Minor's interview notes taken during the Appellant's interview.

17. Appellee's Exhibit 3 was introduced into the record and is a copy of Mr. Minor's notes taken during the interview of the Intervenor.

18. The next to testify at the hearing was **Renee Buckingham**, who is the SRA for the Lakes Region. Upon review of Appellant's Exhibit 1, Ms. Buckingham stated she had reviewed all five of the elements to be considered during the promotion procedure set forth under 101 KAR 1:400.

19. Ms. Buckingham stated that each candidate's seniority was discussed as were their qualifications, record of performance, conduct, and performance evaluations. According to Ms. Buckingham the biggest challenge to the new job was instituting a massive re-design and when the panel reviewed the required five elements, it was done with an eye toward who would have the most ability to manage the re-design. According to Ms. Buckingham, this is why the questions asked during the interview were all behavioral questions designed to determine each candidate's leadership abilities.

20. Appellee's Exhibits 4 and 5 were introduced into the record and according to Ms. Buckingham accurately reflect her thoughts at the time the notes were written.

21. Finally, Ms. Buckingham stated the main reason Ms. Beth Wilson was selected for the position was because after comparing all five elements between all the applicants they were looking for a leader who would assist the region in implementing this massive re-design. Ms. Wilson had direct experience in implementing the project in Daviess County and helping staff to adjust to the same. Not only did Ms. Wilson have a positive frame of mind, but she also had a good grasp as to what the re-design meant along with the ability to get people on board with it. Finally, after a review of the five factors set forth in 101 KAR 1:400, Beth Wilson was recommended for the subject position.

22. The next to testify was **Jennifer Warren** who is the SRA for the Cumberland Region. Ms. Warren testified that the five elements set forth in 101 KAR 1:400 and KRS 18A.0751 were each considered by herself and the interview panel when recommending Beth Wilson for the position of FS SRAA. This included the huge difference in seniority. She explains that the importance of implementing the massive re-design played into their decision because where the Cabinet was going at that point, the best leader from the pool of applicants needed to be chosen.

23. Ms. Warren reviewed the Selection Worksheet found in Appellant's Exhibit 1 and stated she signed it and agreed with it.

24. Appellee's Exhibits 6 and 7 were introduced into the record through the witness.

25. The next to testify was the Appellant, **Jacki Wilson**. Ms. Wilson is currently a Management Review Officer with the Office of the Ombudsman and has been since November 16, 2009. Ms. Wilson had been a Field Services Supervisor when she took a voluntary demotion to her current Management Review Officer position. Appellant's Exhibits 4 through 10 were introduced into the record through the witness. These items were entered into the record in an effort to demonstrate the Appellant had superior seniority and more time in a leadership position than the Intervenor.

26. At the end of the Appellant's testimony, the Appellee made its motion for a directed verdict which was taken under consideration but not immediately ruled upon.

27. The first to testify on behalf of the Appellee was **Kelly Staples**, the Assistant Director for the Division of Service Regions. Ms. Staples works with all 120 counties in the state on the Family Support side in addition to processing personnel actions. Ms. Staples testified that the Commissioner for DCBS is her second-line supervisor. It is her duty to review all personnel actions including any register requests, etc. Ms. Staples recalled speaking with Joey Minor about filling the subject position prior to the process beginning and advised him to look at all of the criteria required under the applicable statute and regulations, and to look at all of them equally.

28. The next to testify was **C-Ann Robinson** who works in the Office of Human Resource Management (OHRM) for the Cabinet for Health and Family Services. Ms. Robinson processes personnel actions for the Department for Community Based Services (DCBS). Ms. Robinson reviews Selection Worksheets to be sure they are completed, filled-out, and that a person is ultimately recommended for a position. She also makes sure that all five factors required to be considered during the promotion process are addressed. In this instance, all five factors required to be considered under 101 KAR 1:400 were addressed. Ms. Robinson reviewed Appellant's Exhibit 1 and had no problems or concerns about the Intervenor's selection.

29. The next to testify was **Dorcas Peach**, who is a Human Resources Branch Manager and is the Appointing Authority in this matter. Ms. Peach has been the Branch Manager since 2005 and has been in DCBS in the personnel area since 1999. Ms. Peach explained that she reviews the paperwork after C-Ann Robinson in order to double check the same before she signs off on it. In this instance, she could find nothing wrong with the promotion process and had no concerns at all that the five criteria required to be considered during the promotion process had been properly considered in this instance. As such, after her review, she sent the paperwork back to Ms. Robinson to process.

30. On cross-examination, Ms. Peach testified it is not unusual to give a person with less seniority a promotion. It does not regularly happen, but it does happen.

31. The last to testify at the evidentiary hearing was the Intervenor, **Beth Wilson**. Upon the close of her testimony, the evidentiary record was closed.

32. This matter is governed by KRS 18A.0751(4)(f) which states:

For promotions which shall give appropriate consideration to the applicant's qualifications, record of performance, conduct, and seniority. Except as provided by this chapter, vacancies shall be filled by promotion whenever practicable and in the best interest of the service.

33. This matter is also governed by 101 KAR 1:400, Section 1(1) which states:

Section 1. Promotion.

(1) Agencies shall consider an applicant's qualifications, record of performance, conduct, seniority and performance evaluations in the selection of an employee for a promotion.

...

34. The Hearing Officer has considered the entire administrative record, including the testimony and statements therein.

**FINDINGS OF FACT**

1. After requesting a register and determining which candidates to interview, on November 6, 2013, Joey Minor, along with two SRAs from different regions, interviewed four qualified applicants (including the Appellant and the Intervenor) for the position of Family Support Service Region Administrator Associate in the Two Rivers Service Region. After completing the interviews, and having reviewed the documentation presented to them, including performance evaluations, Internal Mobility sheets, applications for employment, and any awards, the Selection Worksheet found in Appellant's Exhibit 1 was completed. On November 13, 2013, the interview panel met, reviewed the Selection Worksheet, and each signed off on the same thereby unanimously recommending the Intervenor, Beth Wilson, for the subject position.

2. In her Appeal Form, the Appellant alleged that favoritism was shown to the Intervenor which resulted in her hiring. It was also alleged that the applicants' work history, evaluations, years of experience, education, and qualifications were not properly considered by the interview panel when they recommended the Intervenor for the subject position.

3. The testimony from all of the members of the interview panel clearly demonstrates that each applicant's qualifications, record of performance, conduct, seniority, and performance evaluations were properly considered during the process which resulted in the selection of the Intervenor for the promotion to FS SRAA in the Two Rivers Region. The panel members were each well aware that the Intervenor had considerably less seniority than that of the Appellant, but chose the Intervenor based mainly on her leadership abilities and potential for making the Cabinet's business re-design a success moving forward.



**CONCLUSIONS OF LAW**

1. The Appellant timely filed her appeal with the Personnel Board appealing from the promotion of the Intervenor to the Family Support Service Region Administrator Associate (FS SRAA) in the Two Rivers Region on December 2, 2013.

2. Although it is atypical to promote a candidate with considerably less seniority than that of the other candidates, in this instance, the ultimate recommendation was justified and the Appellee properly considered each candidate's qualifications, record of performance, conduct, seniority, and performance evaluations when it selected the Intervenor for the subject position.

3. The Appellant has failed to demonstrate by a preponderance of the evidence that the Appellee failed to comply with the requirements set forth at KRS 18A.0751(4)(f) and 101 KAR 1:400.

**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **JACKI WILSON VS. CABINET FOR HEALTH AND FAMILY SERVICES AND BETH WILSON (APPEAL NO. 2013-279)** be **DISMISSED**.

**NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

**Any document filed with the Personnel Board shall be served on the opposing party.**

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

**ISSUED** at the direction of **Hearing Officer Geoffrey B. Greenawalt** this 14<sup>th</sup> day of August, 2014.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Mona Womack  
Jacki Wilson  
Beth Wilson